

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

2520 Venture Oaks Way, Suite 350

Sacramento, CA 95833

(916) 274-5721

FAX (916) 274-5743

Website address www.dir.ca.gov/oshsb



PROPOSED PETITION DECISION OF THE OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD (PETITION FILE NO. 525)

INTRODUCTION

On September 21, 2011, the Occupational Safety and Health Standards Board (Board) received a petition dated September 19, 2011 from Mr. Andras Uhlyarik (Petitioner), President of California Pulse, Inc., in Apple Valley, California. The Petitioner requests that the Board update Title 8, California Code of Regulations, to the current (2011) edition of the National Fire Protection Association (NFPA) 33, Standard for Spray Application Using Flammable or Combustible Materials.

SUMMARY

The Petitioner states two reasons why the current version of NFPA 33-2011 should be incorporated into Title 8:

1. There have been many improvements to NFPA 33 over the years, and these improvements should be reflected in Title 8.
2. Companies in the spray finishing industry reference the current version of NFPA 33 and have their products tested by nationally recognized testing laboratories to the current NFPA 33 standard. It would facilitate doing business in California if the Title 8 standards relating to spray finishing applications would be the same as the current NFPA 33 standards.

NFPA 33 applies to the spray application process of flammable or combustible materials either continuously or intermittently. In subsequent e-mail correspondence and telephonic discussion with the Petitioner, he stated that the thrust of his petition is to have Title 8 spray booth standards amended to permit the recirculation of spray booth air which is addressed by NFPA 33-2011.

HISTORY

The Board has not granted or denied any previous petition request to update Title 8 Standards with the latest edition of NFPA 33 and/or regarding the recirculation of spray booth air.

However, in 2007, the Board granted to Fleetwood Motor Homes of California, Incorporated a permanent variance from California Code of Regulations, Title 8, Section 5153(c)(1). The

variance concerned the recirculation of air in Fleetwood's spray booths at its Riverside, California facilities. That variance was subject to numerous conditions. The Board's variance log indicates that, prior to Fleetwood, the Board granted two other variances concerning the recirculation of spray booth air (to HessCo Industries in 1985 and to Gulfstream Aerospace in 1997).

NATIONAL CONSENSUS STANDARDS

NFPA 33-2011 is the latest edition of this standard. The next update will take place in 2014. NFPA 33-2011, subchapter 7.5.1, allows recirculation of exhaust air only if a set of strict conditions are met. The first condition states, "Recirculation shall be allowed only for unmanned spray operations and for cascading to subsequent unmanned spray operations." The following subchapter (7.5.2) states, "The provisions of 7.5.1 shall not disallow recirculation of air to occupied spaces." ANSI/AIHA Z9.7, Recirculation of Air from Industrial Process Exhaust Systems, states requirements for toxicity and permissible exposure limits that would apply in order to allow the recirculation of air to occupied spaces.

FEDERAL OSHA STANDARDS

Federal OSHA is undertaking a long-term project to update its standards to reflect the latest version of consensus and industry standards. Current federal OSHA standards reference NFPA 33-1969. Existing 29 CFR 1910.107(d)(9) states, "Air exhausted from spray operations shall not be recirculated."

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH (DIVISION) EVALUATION

The Division recommended that the petition in its present form be denied, in that the possible changes to Title 8 are numerous and far-reaching, and these changes could have unintended consequences that do not enhance worker health or safety. The Division leaves the door open to considering a narrower petition (i.e. one limited to the recirculation of air in spray booths).

STAFF ANALYSIS

Board staff agrees with the Division that the process of a comprehensive overhaul of Title 8 spray finishing standards as proposed by the Petitioner would be an enormous undertaking that would require a significant commitment of staff resources and the evaluation of the more than two dozen regulations contained within three articles. Changes of this magnitude could have unintended consequences detrimental to health and safety. The Board staff also finds that the Petitioner's request does not support the necessity for a comprehensive overhaul. In terms of providing satisfactory employee safety, the Board staff has not discovered evidence

that the existing standards are ineffective, impractical or unclear. Board staff believes that in the absence of evidence to the contrary, existing Title 8 spray coating standards are protective, enforceable, practical and consistent with local jurisdiction fire and life safety codes.

CONCLUSION AND ORDER

The Board has considered the subject petition and the recommendations of the Division and Board staff. For the reasons stated in the preceding discussion, the petition is DENIED. This decision does not foreclose the Petitioner from submitting another petition specifically addressing the recirculation of air in spray booths; however, it is noted that the propriety of changing the Title 8 standards to permit such recirculation must be considered in light of 29 CFR 1910.107(d)(9) and the requirement that California standards be at least as effective as corresponding federal standards.